# ARKANSAS SUPREME COURT

No. CR 05-835

NOT DESIGNATED FOR PUBLICATION

ARTHUR DEAN DAVIS, JR.
Appellant

v.

STATE OF ARKANSAS
Appellee

**Opinion Delivered** **May 11, 2006**

*PRO SE* APPEAL FROM THE CIRCUIT COURT OF GRANT COUNTY, CR 94-8-2, HON. PHILLIP H. SHIRRON, JUDGE

AFFIRMED

**PER CURIAM**

A jury found appellant Arthur Dean Davis, Jr., guilty of aggravated robbery and, as a habitual offender, sentenced him to life imprisonment in the Arkansas Department of Correction. This court affirmed. *Davis v. State*, 318 Ark. 689, 890 S.W.2d 602 (1995). In 2005, appellant filed a *pro se* petition to vacate and set aside the judgment that requested relief under Act 1780 of the 2001 Acts of Arkansas. The trial court denied the petition, and appellant now brings this appeal of that order.

This court does not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

Act 1780 provides that a writ of *habeas corpus* can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. *See*

Ark. Code Ann. §§ 16-112-103(a)(1) and 16-112-201--207 (Supp. 2003); *see also Echols v. State*, 350 Ark. 42, 44, 84 S.W.3d 424, 426 (2002) (*per curiam*). A number of predicate requirements must be met under Act 1780 before a circuit court can order that testing be done. *See* Ark. Code Ann. §§ 16-112-201 to -203 (Supp. 2003). A petitioner seeking testing under Act 1780 must first present a *prima facie* case that identity was an issue at trial. Ark. Code Ann. § 16-112-202(b)(1) (Supp. 2003). *Graham v. State*, ___ Ark. ___, ___ S.W.3d ___ (June 24, 2004) (*per curiam*). In its order denying the writ, the trial court found that appellant's own pleadings indicated that identity was not an issue. The facts revealed at trial are dispositive of whether identity was an issue. *Id*. We review the record to make our determination on this point. *Orndorff v. State*, 355 Ark. 261, 132 S.W.3d 722 (2003) (*per curiam)*.

The facts presented at trial are set forth in more detail in our decision on appellant's direct appeal of the judgment, and a brief summary should suffice for our review of this issue in the matter now before us. Melissa Price testified that two men entered the convenience store she managed. One held a gun on her and the other put a knife to her throat and demanded money. After taking money from the cash register, the men left with that cash and the bank bag with the day's deposit. Ms. Price saw the men run to a vehicle with a third man driving. A customer arriving as the men departed saw the two robbers run to a car, and identified appellant as one of the men. The customer testified that he saw the car leave and turn onto a road where a money bag was later discovered.

A short time later, the police stopped a vehicle that matched the vehicle description and license number information provided by Ms. Price. Appellant, the driver, and another man in the car with them, were arrested. The police discovered a gun, a knife and money during a search of the vehicle. Ms. Price identified appellant in a photo lineup and at the trial.

The defense did challenge the reliability of the identifications at trial. Appellant and the driver of the car testified that they had not been in the convenience store, and contested the testimony of the victim and bystander identifying the car and them. The jury obviously did not find appellant's testimony credible. Whether or not identity was an issue, we cannot say that the testing requested would have resulted in evidence that would have materially advanced appellant's claim of actual innocence so as to support the trial court's authorizing testing.

Appellant's petition requested that the money bag, gun and knife be tested for fingerprints, referencing a database for identification that was not available at the time. Appellant also requested DNA testing, but did not specify any items that could be so tested or any new test that was not available at the time. Section 16-112-202(a)(1) requires that the evidence to be tested was not subject to testing because either the technology was not available at the time of trial or the testing was not available as evidence at the time of trial. Fingerprint testing was available, but appellant urges that access to a new database was not.

In any case, under Act 1780, scientific testing of evidence is authorized only if testing or retesting can provide materially relevant evidence that will significantly advance the defendant's claim of innocence, in light of all the evidence presented. *Johnson v. State*, 356 Ark. 534, 157 S.W.3d 151 (2004). As the jury clearly found the appellant's and driver's testimony was not credible, and that the victim's and bystander's testimony was credible, any evidence produced by testing the money bag, gun and knife would not significantly advance appellant's claim of innocence. Should any evidence be produced of a fingerprint other than appellant's, as the gun and knife were found in the car with appellant, it is, in fact, very doubtful that whatever evidence was produced would in any way advance appellant's claim of innocence. The record clearly shows appellant was

not entitled to relief under Act 1780, and accordingly, we hold that the trial court did not err in denying the petition without a hearing.

Affirmed.